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Robert Subia Jr. 278983

ASPC, Winslow, Colorado

2100 S. HWY 87

Winslow AZ 86047

United States District Court
District of Arizona

Robert Subia Jr.

Plaintiff

vs.

CV-14-02151-PHX-DLR(DKD)

State of Arizona

Defendant

Complaint

Jurisdiction

This United States District Court has jurisdiction because of the United States Constitution violations, civil rights violations, and violations of the Arizona State Constitution And that the Department of Correction is a government entity.

Complaint

On 2/29/2012, petitioner Robert Subia Jr. was indicted for Armed Robbery, Kidnapping, Aggravated Assault, two counts of each and one count of theft of means. petitioner plead to one count of Armed Robbery and one count of Aggravated Assault.

In the instant case, petitioner Robert Subia Jr. was falsely accused of these charges. Officers in this case violated this petitioner's civil rights and United States constitutional

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rights and Arizona state constitutional right through out the entire criminal proceedings.

Petitioner due process rights were violated when officers used a picture of the petitioner that was 11 years old to show the victim. This picture looks nothing like the petitioner as he does now. Plus, the victim in the case stated that the second suspect was wearing a bandana at the time of the crime that covered most of his face. This would bring reasonable doubt as to the actual description of the second suspect as the victim could not have seen his face if he was wearing a bandana. The victim also stated that the second suspect had curly hair. Petitioner Robert Subia Jr. does not have curly hair and has pictures of himself taken before the crime without hair. Petitioner was with his girlfriend and visited other friends and relatives the day this crime took place.

Petitioner sixth amendment to the United States Constitution was violated as the United States Constitution guarantees every citizen of the United States the right to competent counsel for his or her defense.

Defense Counsel was deficient in all phases of petitioner legal proceedings. Defense Counsel performance was contrary to clearly established federal law as set forth in the sixth amendment and *Strickland v. Washington*, *Hill v. Lockhart*, and *Padilla v. Kentucky*.

Defense Counsel did nothing to help this petitioner, as defense counsel knew that police found all the evidence in two brothers sister house in a room they were staying in and

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did nothing in the way of showing reasonable doubt of this petitioner ever being involved in this case. These two brothers had a criminal history and police found all the evidence and evidence from other crimes in the room along with the victim property. Two brothers equal two suspects and yet defense counsel did nothing to show that this evidence was not found in the petitioner home, nor was there any evidence found on petitioner. There is plenty of reasonable doubt as to this petitioner not being involved in this crime and defense counsel prejudice the petitioner by clearly allowing vital information that could of proved reasonable doubt and the innocence of this petitioner if these major points would have been brought before the court.

ER 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Defense counsel allowed a miscarriage of justice by knowingly allowing this petitioner to take a plea for a crime he did not commit. Defense counsel did not investigate into the fact that these two brothers were all the evidence was found could of and most likely committed this crime. Nor did defense counsel bring forth the reasonable doubt of this petitioner. If not for the lack of defense counsel to investigate, bring forth information of vital importance, lack of defense counsel to show the fact that these two brothers had a long criminal past and were both staying in the room where all the evidence was found

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and the fact that of the 50 plus finger prints found in and on the car, only one palm print was found on the outside of the car that police used to charge this petitioner.

Petitioner did not even know the suspect or his brother and defense counsel failed to show that police could not prove that there was no connection between them.

For defense counsel to be effective, counsel must provide the petitioner with knowledge and experience to provide the best legal defense possible in preparing for the case. Defense counsel was not prepared, nor investigated information that could of proved the innocent of this petitioner, thus, allowing a miscarriage of justice by denying this petitioner due process of law and violating this petitioner 14th amendment right to equal protection of the law.

The fact that defense counsel did not present the facts of reasonable doubt as to the two brothers being found with all the evidence in a room that they shared and the fact that the victim never saw the face of the second suspect and only one of 50 plus finger prints which was found outside of the car show how much this petitioner was prejudice by the lack of defense counsel performance in this case. For defense counsel to be effective, they must present evidence that is given to them. If not for this deficient performance, petitioner would not be in jail as a innocent person.

Prejudice is satisfied by a defendant offering evidence which proves by a preponderance of the evidence, that, but for counsel deficient performance, there is a reasonable probability the outcome of the case would have been different.

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See Nash, 143 Ariz. at 397, 694 P.2d at 227. A reasonable probability is less than, more likely than not, but more than a mere possibility, State v. Gordon, 146 Arizona 392, 397, 706 P.2d 718, 723 (1985). (quoting State v. Lee, 142 Ariz. 210, 214, 698 P.2d 153, 157 (1984).

This petitioner was severely damaged by the Defense counsel lack of preparation on this case and failure to investigate it.

As a result, petitioner loss a job pay him 21.87 an hour, a house valued at \$115,000 dollar, and has been taken from his wife and three kids for the past two years and six months.

There is no doubt that plenty of reasonable doubt is in this case and the fact that defense counsel was incompetent and allow the petitioner United States Constitutional rights of the 5th, 6th and 14th amendment to be violated as well as petitioner civil rights.

Petitioner is guarantee by the United States Constitution to have competent counsel, and to have due process of law and equal protection of the law. Petitioner was put in an illegal lineup, as police used a 11 year old photo to show the victim which was a violation of petitioner right to due process and equal protection of the law. Petitioner due process was also violated as defense counsel knew of the two brother criminal history and the fact that all the evidence of the crime was found in the room they were staying at and nothing was found at the petitioner home or on him. Defense counsel never mention the fact that the petitioner car was maroon and not a cream color as the victim sayd she saw and the fact that police found nothing in the petitioner car or home.

All things that show there was no involvement by

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This petitioner as this petitioner did not know any of the two brothers or nothing about them.

Demand

Because of the miscarriage of justice, the United States constitutional violations, Arizona state constitutional violations, civil right violation and the fact that petitioner was taken from his wife and three kids, less a job paying 21.87 an hour and less a home valued at \$115,000 dollar, petitioner ask this court for actual damages of \$150,000 dollars and punitive damages in the amount of \$150,000 dollars for pain and suffering. petitioner has been in prison for two years and six months for a crime he did not commit.

Thank You

God bless

Robert Subia Jr.

Respectfully Submitted this 23 day of September, 2014

By Robert Subia Jr.